

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CONSUMERS ENERGY COOPERATIVE	DOCKET NO. P-858
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued August 12, 2004)

On May 19, 2004, Consumers Energy Cooperative (Consumers Energy) filed a petition and exhibits for a permit to construct, operate, and maintain a natural gas pipeline approximately 2.33 miles long in Hardin County, Iowa. The proposed 6-inch diameter pipeline will transport natural gas from a proposed tap off the Northern Border Pipeline to the Pine Lake Ethanol Plant south of Ackley, Iowa. Consumers Energy filed amendments to its petition and exhibits on July 13, July 28, and August 2, 2004.

On August 12, 2004, the Utilities Board (Board) assigned this proceeding to the undersigned administrative law judge.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, land restoration plan issues, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC Chapters 9 and 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains

all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Consumers Energy must submit prepared testimony and exhibits in accordance with the procedural schedule set forth in this order. At a minimum, Consumers Energy's prepared testimony must address the issues listed above. In addition, Consumers Energy must address whether it is a "pipeline company" within the meaning of Iowa Code § 479.2(3), who will be constructing, operating, and maintaining the proposed pipeline, and the qualifications and experience of any listed company. On August 2, 2004, Consumers Energy filed a document entitled "MAOP Attachment to Exhibit C." The third page of the document is signed by "Mr. Rudy Parcel, Gas Services Coordinator, IAMU." Consumers Energy must explain the relationship between Mr. Parcel and Consumers Energy and why Mr. Parcel signed the document. Consumers Energy must also address the items identified in the report regarding the pipeline dated August 3, 2004, filed in this docket by Mr. Jeffrey L. O'Neal.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than Consumers Energy who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

Consumers Energy and the Consumer Advocate are currently the only parties in this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. Consumers Energy does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit.

Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Utilities Board Records Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case, except that three copies must be sent to the Consumer Advocate. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code Chapter 479 and 199 IAC Chapters 9 and 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this

case. There are links to the Iowa Code and to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey O'Neal, regulatory engineer for the Board's Safety & Engineering Section, has prepared a report in the form of a memo dated August 3, 2004, concerning Consumers Energy's petition. A copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prepared testimony and at the hearing. Mr. O'Neal will be present at the hearing and available for cross-examination regarding his report.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Consumers Energy's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.
2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of

all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before August 20, 2004, Consumers Energy must file prepared direct testimony relating to its petition as discussed in this order.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before August 31, 2004.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 2 p.m. on Tuesday, September 7, 2004, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa 50319. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing, or must make arrangements for such provision if not physically present at the hearing. The hearing will be by telephone conference call unless any objections are filed, or unless any party files an objection to a telephonic hearing at least five days prior to the hearing. Parties and persons who wish to be connected to the hearing must dial 1-866-708-4636 to reach the bridge line. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 at least five business days prior to the hearing to request that appropriate arrangements be made.

4. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".
5. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated August 3, 2004, that is attached to this order, and of the facts contained in the report. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.
6. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Consumers Energy and the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.
7. Consumers Energy must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 12th day of August, 2004.

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-858

FROM: Jeffrey L. O'Neal

DATE: August 3, 2004

SUBJ: Staff Review of Consumers Energy Cooperative Petition for Pipeline Permit for 2.33 Miles of 6-inch Diameter Natural Gas Pipeline in Hardin County, Iowa.

On May 19, 2004, Consumers Energy Cooperative (Consumers Energy) filed a Petition for Pipeline Permit with the Utilities Board (Board) for a proposed natural gas transmission pipeline in Hardin County, Iowa. On June 11, 2004, I conducted a field examination of the proposed route. By letters dated June 29, 2004, and July 21, 2004, I advised Consumers Energy of petition deficiencies requiring correction, and requested additional information on certain items. On July 13, 2004, July 28, 2004, and August 2, 2004, Consumers Energy filed revisions to the petition and exhibits and provided additional information.

The petition as amended is for construction of 2.33 miles of 6-inch diameter steel pipeline. The proposed pipeline would extend from a proposed tap off the Northern Border Pipeline to the Pine Lake Corn Processors, LLC's ethanol plant, approximately 5 miles south of Ackley, Iowa. Consumers Energy plans to design and test the pipe and most of the pipeline components for a maximum allowable operating pressure (MAOP) of 1050 psig, but plans to operate the pipeline at 500 psig.

No informational meeting was held for this project. An informational meeting was not required because the proposed pipeline project is less than 5 miles long. See 199 IAC 10.3.

Route Inspection

I examined the route of the proposed pipeline on June 11, 2004. The weather was overcast, with visibility of more than 1 mile. The route map filed as Exhibit B was used as a guide.

The route begins at a proposed tie-in with existing Northern Border Pipeline facilities on the north side of US Highway 20 in rural Harding County. US Highway 20 here is a recently constructed, 4-lane, limited access, divided highway. The route runs west on private property just north of Highway 20, crossing Y Avenue, and

continuing along the north side of Highway 20, until Highway 20 curves to the south, east of County Highway S56. The proposed pipeline route continues in a westerly direction, Crossing Highway S56, and ending at the Pine Lake Corn Processors ethanol plant property.

There are no residences near the route. The nearest house to the pipeline route is south of US Highway 20 on Y Avenue, more than 0.1 mile south of the proposed pipeline route. There is a farmstead a little over $\frac{1}{4}$ mile east of the proposed connection with Northern Border Pipeline. There are additional farmsteads on the roads along the north and south edges of Sections 1, 2 and 3; all of them are about $\frac{1}{2}$ mile from the proposed pipeline route. The route passes mostly through flat to gently rolling agricultural land, planted in row crops. The easternmost approximately 1.4 miles of the route parallels the north side of US Highway 20. The remainder of the route runs near the east-west half section line through Sections 2 and 3. The route crosses Y Avenue (a dead-end gravel road) in Section 2, and crosses County Highway S56 (a paved road) in Section 3. The route crosses a small, unnamed stream in Section 3. Except for the road crossings, the entire route is on private property.

On the east side of County Highway S56, about 200 feet north of the apparent half section line, is a two-story metal building with some grain bins on the north side of the building. It appears this building would be close enough to the route to create a Class 3 location, if more than 20 persons used it for enough days in a year.¹ In a letter filed July 13, 2004, Consumers Energy stated this building is approximately 181 feet from the proposed pipeline route, but it is not routinely occupied by 20 or more persons. The letter also stated the regulator station at the end of the proposed pipeline will be approximately 1,690 feet from the buildings on the ethanol plant site. Therefore, neither the building on County Highway S56 nor the ethanol plant will create a Class 3 location, and the entire route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is the lowest population density classification.

The Pine Lakes Ethanol Plant was under construction at the time of the inspection.

No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found. The route is in flat to gently rolling agricultural land, except where it crosses one paved county road, one gravel road, and one small stream. The entire route is in a Class 1 location.

¹ See 49 CFR § 192.5 for definitions of class locations.

Petition

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)"b". Exhibit C, Item 5 states the MAOP of the pipeline will be 1050 psig. The filing shows the pipe and most of the components will be designed, constructed and tested to qualify for a maximum allowable operating pressure (MAOP) of 1050 psig, although Consumers Energy plans to operate the pipeline at 500 psig. However, this pipeline will include pressure-reducing regulators at both the upstream and downstream ends of the pipeline. The regulators at the upstream end of the pipeline will cut the pressure from 1050 psig to 500 psig. The regulators at the downstream end of the pipeline will cut the pressure from 500 psig to a lower pressure for delivery to the customer. The MAOP attachment to Exhibit C states the maximum outlet pressure for the pressure reducing regulators is 700#. It appears this would limit the MAOP for this pipeline system to 700 psig. See 49 CFR § 192.619(a)(1) and § 192.143. In addition, the maximum differential pressure for the regulators is listed as 800#. It appears that if the inlet pressure of the downstream regulators were 1050 psig, the outlet pressure of these regulators could not be less than 250 psig without exceeding this design limit for the downstream regulators. Consumers Energy should be asked to either file a revised Exhibit C showing an MAOP of 700 psig, or explain in its testimony how the regulators at the tap off Northern Border could be operated in compliance with 49 CFR Part 192 with an outlet pressure of 1050 psig, and how and the regulators at the downstream end of the pipeline could be operated in compliance with 49 CFR Part 192 with an inlet pressure of 1050 psig. If the MAOP listed on Exhibit C, item 5, is revised to 700 psig, the "% SMYS at MAOP" listed on Exhibit C, item 3, should also be revised to 35%.

Consumers Energy has supplied information about a short section of pipe Consumers Energy will need to construct where they will take delivery of gas from Northern Border at up to 1050 psig, then cut the pressure to 500 psig for transmission through their proposed pipeline. It is not uncommon for a pipeline to include a short section of pipe operating at a higher MAOP than the rest of the pipeline, feeding a regulator station at the upstream end of a pipeline. Consumers Energy has filed sufficient information about this section of pipe to demonstrate that it will comply with the design, construction, and testing requirements of the Iowa Utilities Board.

The MAOP attachment to Exhibit C does not state the actual design pressure for the odorizer. It is my understanding the design pressure for the odorizer will be greater than or equal to 1050 psig, but this should be clarified for the record. Consumers Energy should be asked to provide the minimum design pressure for the odorizer (in psig) in its testimony.

Assuming Consumers Energy confirms the odorizer design pressure will be greater than or equal to 1050 psig, the filing would support specifying a maximum

operating pressure of 700 psig in a pipeline permit for this pipeline.

Except for the questions regarding the MAOP, the information filed by Consumers Energy shows the pipeline will be designed, constructed and tested in compliance with these standards.

The flow rate stated by Consumers Energy in Exhibit C, Item 1, is somewhat higher than the value I calculated. Consumers Energy states the flow rate will be about 2500 thousand cubic feet per hour (mcf per hour). My calculations show the flow rate at the inlet and outlet pressures specified would be about 2100 mcf per hour. This is not a significant issue unless the customer's requirements cannot be met by the pipeline as designed. Consumers Energy should be asked to address in testimony whether the pipeline will have sufficient capacity to meet the customer's needs, even if the flow rate is 2100 mcf per hour, rather than 2500 mcf per hour, at the inlet and outlet pressures specified in Exhibit C, item 1.

Consumers Energy plans to use PSL 2 pipe, which is more resistant to rupture than the alternative PSL 1 pipe. (Both PSL 1 pipe PSL 2 pipe comply with the safety standards.)

The proposed route is on agricultural land. Consumer Energy's Land Restoration Plan appears to comply with the applicable provisions of I99 IAC Chapter 9.

No objections have been filed as of the date of this report.

Summary

I have reviewed the petition and exhibits in this docket. With the exception of clarification of the items listed below, the information presented shows the proposed pipeline would comply with all design, construction, and testing requirements set forth by the Iowa Utilities Board. The filing appears in sufficient order to set a date for hearing.

Consumers Energy should be asked to either file a revised Exhibit C showing an MAOP of 700 psig, or explain in its prefiled testimony how the regulators at the tap off Northern Border could be operated in compliance with 49 CFR Part 192 with an outlet pressure of 1050 psig, and how and the regulators at the downstream end of the pipeline could be operated in compliance with 49 CFR Part 192 with an inlet pressure of 1050 psig. If the MAOP listed on Exhibit C, item 5, is revised to 700 psig, the "% SMYS at MAOP" listed on Exhibit C, item 3, should also be revised to 35%.

Consumers Energy should be asked to provide the minimum design pressure for the odorizer (in psig) in its prefiled testimony.

Consumers Energy should be asked to address in its prefiled testimony whether the pipeline will have sufficient capacity to meet the customer's needs, even if the flow rate is 2100 mcf per hour, rather than 2500 mcf per hour, at the inlet and outlet pressures specified in Exhibit C, item 1.